Crl.A. 363/2001
BEFORE
HON'BLE MR JUSTICE P.G.AGARWAL
HON'BLE MR.JUSTICE H.N.SARMA

ORAL

AGARWAL,J:

Heard Mr.R.Ali, learned amicus curiae apeparing for the appellant and Mr. D. Das, learned P.P.Assam.

The accused appellant before us,Mina Kanta Buragohain, was tried by the learned Sessions Judge, Dhemaji in Sessions Case No. 26(DH)/2000. During trial, the prosecution examined as many as 13 witnesses and vide the impugned judgment the learned trial Court convicted the accused appellant under Section 436 IPC as well as under Section 302 IPC. For the offence under Section 302 IPC the accused was sentenced to imprisonment for life and to pay fine of Rs.1000/-, in default in payment of fine, to undergo further imprisonment for 3 month. However, no separate sentence was imposed for the offence under Section 436 IPC. Hence, the present appeal.

Prosecution case, in brief is that, on 28.02.02 around 12 noon the accused appellant picked up quarrel with his father and set fire in their dwelling house and then went to the informant Punaram Dowarah and thereafter set his house on fire. Later on he entered into the house of Pushpa Lata Dowarah and wanted to set fire. The deceased objected to it, to which the accused assaulted her with a lathi as a result of which she died.

Autopsy was conduced by Dr. Madhav Sarma (PW-13). However, the post mortem was conducted by Dr.Ananta Bhuyan. Ext-8 is the postmortem report which shows that the deceased sustained lacerated injuries on the scalp as a result of which cranialvault was completely crushed. The scalp and brain were lacerated and brain matter came out. In the opinion of the Doctor, the death was due to ante mortem injury.

Chitra Shen Buragohain (PW-1) and Deben Buragohain (PW-10) are the two eye witnesses of the occurrence and they gave statement as to how the incident took place and how the deceased was assaulted and killed. Other witnesses have also corroborated the statement of these witnesses.

We have perused the materials on record minutely and find that the prosecution evidence has clinchingly establish the fact that it was the accused appellant who set fire and killed the deceased when the later protested to the act of the accused. The incident took place in broad day light and the witnesses are near relations of the accused and as such the recognition of the assailant is not in dispute. We, therefore, confirm the conviction under Section 436 IPC.

So far the offence under Section 302 IPC is concerned, the learned counsel submits that the accused had no intention to cause the death. Admittedly, the accused had no motive for killing. A submission was also made that the accused was suffering from insanity. The burden of proving insanity was on the accused, but he miserably failed to establish the same and as such the plea on legal insanity could not be established. However, we find that the accused had no intention to cause death and it is because of a single injury, which was caused at the hit of moment, when the deceased obstructed the accused from setting the house on fire. We, therefore, hold that the act of the accused constituted offence of culpable homicide not amounting to murder and punishable under Section 304 Pt-I IPC. Accordingly, the conviction under Section 302 IPC is modified and altered under Section 304 Pt-I IPC.

In this case, we find that since the date of his arrest i.e. 01.03.2000 the accused person is in jail. Thus, he is in jail for nearly seven years by now. Considering the age of the accused and the surrounding circumstances, we sentence the accused for the period already undergone by him. The accused appellant be released forthwith, if not wanted in connection with any other case..

Send down the records.

Fees of the learned amicus couriae is fixed at Rs.3000/-